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**From:**

**Sent:** Thursday, March 15, 2012 10:17:02 AM

**To:**

**Cc:**

**Subject:** FW: Estate Tax Lien Question

Good morning.

Rather than continue to play phone tag, I thought I would email you. If you have comments or additional questions, please contact me.

Section 6324(a)(2) imposes personal liability on transferees of nonprobate property to the extent of the value of the transferred property. You have not indicated which section (or sections) defining nonprobate property applies, but I assume one, e.g., section 2038, does. As I understand your question, for collection purposes, you are relying on, not the estate tax lien under section 6324(a)(1) but rather the personal liability under section 6324(a)(2). You asked whether, with the distribution to the children, a lien arose on the children's property. (I assume you mean property beyond the property distributed, as the distributed property is encumbered by the (a)(1) estate tax lien.) The short answer is, no. Except with respect to the like lien that is created upon the transferee's transfer of the distributed property to a purchaser or the holder of a security interest and the divestment of the estate tax lien, section 6324(a)(2) does not create a lien on all the property of the children--it just imposes personal liability on the children. Again, the Service can rely on the estate tax lien under (a)(1), but that is just a lien on the estate property, not all the property of the children.

To enforce the personal liability imposed by (a)(2), the Service can bring an action under section 7402. Or it can go the section 6901 route which will result in assessments against the transferee/children, liens against the children's property, etc. Whether the children have CDP rights depends on the collection avenue taken. If the Service were relying on the estate tax lien under (a)(1), the children would not have CDP rights as the Service would be collecting from property encumbered with the FTL. The children would not be persons afforded CDP protections: As discussed on the Treasury regulations, the children would not be the taxpayer, i.e., the persons identified in sections 6321 and section 6331. See Treas Reg §§ 301.6320-1(a)(2) Q&A A-1 and (b)(2) Q&A B-5 and Treas Reg §§ 301.6323-1(a)(2) Q&A A-1 and (b)(2) Q&A B-5. On the other hand, after the Service has asserted transferee liability under section 6901 and wishes to commence administrative collection, the children would have CDP rights (with CDP notice to the children--notice to the children is not accomplished by notice sent to the estate.) See the Treas regs above and section 6901(a).